

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
ENGELHARD CORPORATION,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No.: 05 11241 JLT
	)	
UNITED STATES OF AMERICA, <u>et. al.</u>	)	<i>(Electronic filing)</i>
	)	
Defendants.	)	
_____	)	

**ENGELHARD CORPORATION'S MOTION FOR DECLARATORY AND  
SUMMARY JUDGMENT**

Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, Plaintiff Engelhard Corporation ("Engelhard") hereby respectfully moves the Court for declaratory and summary judgment on the issues set forth in this Court's Order of May 9, 2006 (the "Order").

The Order directs the parties to examine two issues related to Engelhard's Complaint and the Fourth Cause of Action. The First Issue: Whether the Administrative Order referred to in Paragraphs 80-82 of the Complaint is an "administrative settlement" within the meaning of Section 113(f)(3)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9613(f)(3)(B). And the Second Issue: Whether the statute of limitations found at CERCLA Section 113(g)(3), 42 U.S.C. § 9613(g)(3), controls Engelhard's contribution claims in its Fourth Cause of Action under Section 113(f)(3)(B).

As explained more fully in the Memorandum in Support of Engelhard Corporation's Motion for Declaratory and Summary Judgment, CERCLA provides no restrictions or limitations on the types of "administrative settlements" that fall within the meaning of Section 113(f)(3)(B). Accordingly, with respect to the First Issue: the Administrative Order between Engelhard and the EPA falls within the meaning of Section 113(f)(3)(B) because "some or all" aspects of a

“response” action for environmental cleanups under CERCLA are found within the actions contemplated by the Administrative Order.

With respect to the Second Issue, the statute of limitation found at Section 113(g)(3) unambiguously specifies narrowly defined circumstances and triggering events for the imposition of a three-year limitation period. None of the circumstances or triggering events mentioned in Section 113(g)(3) has occurred at the Plainville facility. Hence, the three-year limitation period of Section 113(g)(3) does not apply to Engelhard’s CERCLA claims under its Fourth Cause of Action against the United States.

According, pursuant to Rule 56(a) the Court may issue a declaratory and summary judgment on the issues identified in the Court Order of May 9, 2006. A proposed order is attached to Engelhard Memorandum In Support.

#### **REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), Engelhard respectfully requests the opportunity for oral argument before the Court.

FILED ON BEHALF OF THE PLAINTIFF  
ENGELHARD CORPORATION  
By its attorneys

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Dated: August 4, 2006

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Dated: August 4, 2006

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have this 4<sup>th</sup> day of August 2006, served a true and correct copy of the foregoing,

ENGELHARD CORPORATION'S MOTION FOR DECLARATORY AND SUMMARY JUDGMENT

on Defendant's counsel of record by electronic filing, as follows:

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